

Corporation of the Town of Newmarket

By-law 2021-XX

A By-law to conserve and protect trees on private property within the Town of Newmarket.

Whereas without limiting the broad municipal powers, sections 135, 139 to 141, 429, 431 and 444 of the Municipal Act, 2001 provides municipalities with further authority to regulate and prohibit the destruction or injuring of trees and to provide for a system of fines and other enforcement orders;

And whereas Council has determined that it is desirable to enact a By-law to protect, prohibit and regulate the destruction or injury of trees and encourage the preservation and planting of trees within the Town of Newmarket.

Therefore, be it enacted by the Council of the Corporation of the Town of Newmarket as follows:

1.0 Title

This By-law may be known and cited for all purposes as the “Private Tree Protection By-law 2021-XX”.

2.0 Definitions

For the purpose of this By-law, the following definitions shall apply:

“**Aggregate Inch Method**” means a method for calculating tree replacement requirements whereby the aggregate **dbh** of trees removed is equal to or less than the **dbh** of trees planted in replacement, regardless of the number of individual trees (i.e. if one 30cm (11.8 inches) **dbh** tree is to be removed, the replacement will be 2 trees of 15cm, or 3 trees of 10cm, etc.) ;

“**Arborist**” means a person who is a specialist or expert in the area of the care and maintenance of trees and includes an arborist qualified by the College of Trades, an ISA Board certified master arborist or a certified arborist qualified by the International Society of Arboriculture, a consulting arborist registered with the American Society of Consulting Arborists, a registered professional forester or a person with other similar qualifications as approved by the **Director**;

“**Arborist Report**” means a detailed description of a **Tree** or **Trees** written by an **Arborist** that establishes the existing condition of a **Tree(s)** with information such as species, location, size, condition, structural integrity, health (disease), infestations and vigour, and may consider compensation and/or security values and tree protection fencing details;

“**Council**” means the Council for the Town of Newmarket and includes its successor;

“**Dead**” means a **Tree** has no living tissue, as determined by an **Arborist**;

“**Destroy/Destruction**” means to kill by cutting, burning, uprooting, chemical application, or other means;

“**Diameter at Breast Height or dbh**” means the measurement of the diameter of the trunk of a **Tree** from the outside bark at a height of 1.4 meters above the existing

ground adjoining its base or where there are multiple stems, the total of the diameters of the stems measured from outside the bark on each stem;

“**Director**” means the Director of Public Works or their delegate;

“**Good Arboricultural Practice**” means the proper implementation of removal, renewal and maintenance activities known to be appropriate for individual trees in and around urban areas to minimize detrimental impacts on urban forest values, and includes pruning of trees to remove **dead** limbs, maintain structural stability and balance, or to encourage their natural form, provided that such pruning is limited to the appropriate removal of not more than one-third of the live branches or limbs of a tree, but does not include pruning to specifically increase light or space;

“**Guidelines**” means the **Town**’s guidelines for processing and reviewing **Private Tree Removal Permits**;

“**Hazardous**” means a destabilized or structurally compromised **Tree** that is in danger of causing damage or injury to life or property as verified or confirmed by an **Arborist** or by the **Director** using the ISA Traq method for risk assessment;

“**Heritage Tree**” means a **Tree** designated under Part IV of the Ontario Heritage Act or **Trees** recognized as Heritage Trees by the Ontario Heritage Tree Program of Trees Ontario;

“**Injure/Injury**” means to harm or **destroy** a **Tree** by an action that causes physical, biological or chemical damage or death to a **Tree**, but does not include pruning or removing branches for maintenance purposes which is done in accordance with **Good Arboricultural Practice**;

“**Nuisance Tree**” means a **Tree** that causes significant displeasure to a homeowner due to leaves, fruit, or other droppings; inappropriate shading; personal taste or other personal reasons;

“**Private Tree Removal Permit**” means a written permission to remove, **Injure**, or **Destroy Tree(s)** located on private property, issued by the **Director** pursuant to the provisions of this By-law;

“**Socially Significant Tree**” means a **Tree** of significant age, size, or other unique physical characteristics or community significance, that contributes to or defines a neighbourhood’s character as determined by the **Director**;

“**Town**” as the context requires, means “The Corporation of the Town of Newmarket”;

“**Tree**” includes all woody vegetation, which at maturity, will reach a height of at least 4.5m;

“**Tree Protection Plan**” means a report and/or drawing that details the steps that will be taken to preserve **Tree(s)** to ensure their safety and long-term viability.

3.0 Application

3.1 This By-law applies to trees equal to or greater than 20 centimetres in **diameter at breast height** or grade on private property in the Town of Newmarket.

3.2 Notwithstanding Section 3.1, this By-law does not apply to **Trees** governed by the Town of Newmarket Woodlot By-law 2007-71, as amended and the Region of York Forest Conservation By-law 2013-68, as amended.

3.3 This By-law also applies to Trees subject to an approved Site Plan Agreement and Minor Variance decision.

- 3.4 The **Director** is authorized to:
- a) Undertake the work of an **Arborist Report** to determine:
 - i. The health, species of the subject **Tree**; and
 - ii. Which exemption of this by-law, if any, permits the removal of the **Tree**;
 - b) Determine value for replacement and/or any securities;
 - c) Issue permits for the **Destruction** or **Injury** of **Trees** and impose terms and conditions to the permit;
 - d) Refuse to issue permits for the **Destruction** or **Injury** of **Trees**;
 - e) Stop any work causing **Destruction** or **Injury** to **Trees** that is taking place without a permit or contrary to the terms and conditions of a permit;
 - f) Waive the requirement for an **Arborist Report** and/or **Tree Protection Plan** for an application involving a single residential unit;
 - g) Require an applicant to post a letter of credit or alternate form of security and content acceptable to the **Director** to ensure compliance with conditions of permit issuance.
- 3.5 This By-law does not apply to **Trees** that are subject to exemptions as provided by the Municipal Act.

4.0 General Prohibitions

- 4.1 No person shall remove any **Tree(s)** equal to or greater than 20cm in **diameter at breast height** or at grade on private property without first obtaining a "**Private Tree Removal Permit**" under this By-law.
- 4.2 Notwithstanding Section 4.1, trees equal to or greater than 20 centimetres in **diameter at breast height** or at grade on private property in the Town of Newmarket may be removed subject to a **Private Tree Removal Permit** if:
- a) the **Tree** is **dead**;
 - b) the **Tree** is **hazardous**;
 - c) the **Tree** is a **nuisance tree**;
 - d) the **Tree** being removed facilitates a Building Permit; or
 - e) the **Tree** being removed facilitates a Pool Permit.
- 4.3 No person shall cause or permit the **Injury**, **Destruction** or removal of a **Heritage Tree**, unless they receive approval to do so under the requirements of the Ontario Heritage Act, subject to a **Private Tree Removal Permit**.
- 4.4 No person shall remove a **Socially Significant Tree**.

5.0 Permit Process

- 5.1 The **Town** hereby delegates to the **Director** the authority to issue a **Private Tree Removal Permit** under this By-law, and to impose terms and conditions in accordance with **Good Arboriculture Practice**.
- 5.2 All complete applications for a **Private Tree Removal Permit** shall include:
- a) a complete signed application form as provided by the **Town**;
 - b) the prescribed fee;
 - c) any other document relating to the application as requested by the **Town**, including but not limited to:
 - l) an **Arborist Report** and/or a **Tree Protection Plan**

- prepared by or prepared under the direction of an **Arborist** or (a Qualified OPFA Member); and/or
- II) a Tree Planting Plan for one or more individual **trees** acceptable to the Municipality.

5.3 Following the receipt of a complete application, the **Director** shall consider the following criteria, in approving or refusing a **Private Tree Removal Permit**:

- a) Condition of the **Tree** (e.g. diameter, height, health and structural integrity);
- b) Location of the **Tree**;
- c) Species of **Tree** and associated vegetation;
- d) Crown coverage of the ground [or leaf area];
- e) The protection of ecological systems and their functions, including the protection of native flora and fauna;
- f) Erosion, sedimentation of watercourses, and flood control;
- g) Impacts on surrounding properties, including loss of shade, vistas or privacy;
- h) The cultural heritage value of the **Tree**; and
- i) Any other criteria as identified in the **Guidelines**.

5.4 The **Director** may refuse to issue a **Private Tree Removal Permit** where:

- a) **Tree(s)** are healthy;
- b) environmentally sensitive areas, ecological systems, natural landforms or contours will not be adequately protected and preserved;
- c) erosion or flood control will be negatively impacted;
- d) an application for rezoning, a consent, a minor variance, a plan of subdivision or a site plan to the land on which the **Tree** is located has been submitted to the **Town**, but has not received final approval;
- e) the **Tree(s)** is an endangered or threatened species as defined in Ontario's Endangered Species Act, as amended;
- f) issuance of a permit pursuant to the Region of York Forest Conservation By-law is required;
- g) approval is inconsistent with an approved Site Plan Agreement, **Tree Protection Plan** or an approved **Arborist Report**;
- h) the proposed activities would be in contravention of the Migratory Birds Act, as amended; or
- i) Any other criteria as identified in the **Guidelines**.

5.5 The **Director** may issue a **Private Tree Removal Permit** where:

- a) **Trees** are in poor condition and cannot be maintained in a healthy and safe condition as outlined in an **Arborist Report** or by a site inspection;
- b) the **Trees** are causing or are likely to cause structural damage to a load-bearing structure or roof structure or other physical damage;
- c) the **Director** is satisfied that the **Destruction and Injury of Trees** is consistent with **Good Arboriculture Practice**;
- d) the **Director** is satisfied that the **Trees** are growing in inappropriate locations and cannot be maintained on a routine basis due to restrictive site conditions;
- e) **Destruction or Injury** is required in order to remediate contaminated soil;
- f) **Trees** are to be relocated and the **Director** is satisfied that the **Trees** will be sufficiently prepared for relocation; or
- g) **Destruction or Injury** is required for **Trees** specifically identified for injury or destruction on plans approved by the Ontario Land Tribunal or **Council**.

- 5.6 The **Director** is authorized to impose conditions on a **Private Tree Removal Permit**. Types and examples of conditions are listed in the **Guidelines**.
- 5.7 The **Director** has the authority to amend the conditions based on their discretion, as needed.
- 5.8 Every person who has obtained a **Private Tree Removal Permit** shall ensure that all of the conditions are met.
- 5.9 Where a **Private Tree Removal Permit** requires the planting of replacement **Tree(s)**, the **Director** shall provide to the applicant, in writing:
- a) the number of replacement trees to be planted, which will be determined by the **Aggregate Inch Method**;
 - b) the species, size, and location of the replacement **Tree(s)**,
 - c) the date by which any replacement **Tree(s)** is/are to be planted;
 - d) the maintenance and care of any replacement **Tree(s)** to the satisfaction of the **Director** in accordance with the approved **Arborist Report** and/or **Tree Protection Plan**;
 - e) where replacement planting is not physically possible on site, the **Director** may allow planting at another suitable location or accept a cash in lieu payment.
- 5.10 The term of a **Private Tree Removal Permit** shall be for a maximum of 1 year from the date of issuance.
- 5.11 A **Private Tree Removal Permit** may be revoked by the **Director** if:
- a) it was issued on mistaken, misleading, false or incorrect information;
 - b) it was issued in error;
 - c) the owner or applicant requests in writing that it be revoked; or
 - d) an owner fails to comply with any provision and/or condition of the **Private Tree Removal Permit** or this By-law.
- 5.12 When a **Private Tree Removal Permit** is revoked, the owner and/or applicant shall immediately cease all operations being conducted under the authority of the revoked Permit.
- 5.13 Persons or corporations convicted of an offense under this By-law are still required to obtain a **Private Tree Removal Permit**.

6.0 Offences

- 6.1 Every Person who contravenes any provision of this By-law are liable to fines and administrative fees set out under the Administrative Monetary Penalty System By-law 2019-62, as amended.
- 6.2 Every Person who is contravention of the provisions of this By-law may request a review of the matter in accordance with the Administrative Monetary Penalty System By-law 2019-62, as amended
- 6.3 Any Person who contravenes a provision of this By-law is guilty of an offence an upon conviction is liable to a fine as provided for by the Provincial Offences Act, as amended.

7.0 Severability

7.1 Where a court of competent jurisdiction declares any section of this By-law to be invalid, or to be not in force, or without effect, it is the intention of **Council** in enacting this By-law that the remainder of this By-law shall continue in force and applied and enforced in accordance with its terms to the fullest extent possible according to law.

That xxx

And that xxx

Enacted this xxx day of xxx, 2021.

John Taylor, Mayor

Lisa Lyons, Town Clerk

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